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THOMAS F. MCFARLAND

June 6, 2008

By e-filing

Anne K. Quinlan, Esq
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: STB Docket No. AB-868X, *Mississippi Tennessee Holdings, LLC --
Abandonment Exemption -- in Union, Pontotoc and Chickasaw Counties, MS*

Dear Ms. Quinlan:

This is a joint communication in behalf of City of New Albany, Mississippi (the City), GM&O Rails-to-Trails Recreational District of North Mississippi (GM&O), and Mississippi Tennessee Holdings, LLC (MTH).

The City and GM&O jointly hereby seek the Board's approval for the transfer of the Notice of Interim Trail Use (NITU), currently in the name of the City, to GM&O, effective as of the date of this letter. Attached hereto are:

- (1) a copy of the existing NITU, served July 6, 2006;
- (2) GM&O's Statement of Willingness to Assume Financial Responsibility; and
- (3) a copy of the City's Assignment of the NITU and GM&O's Acceptance of the NITU.

MTH hereby notifies the Board of its consent to the transfer of the NITU from the City to GM&O.

The most recent extension of the trail use negotiating period, served February 5, 2008, extended that period to July 26, 2008. MTH and GM&O have reached agreement for purchase and sale of the right-of-way, and intend to close that purchase and sale on July 15, 2008.

THOMAS F. MCFARLAND

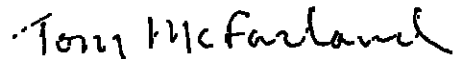
Anne K. Quinlan, Esq.

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Accordingly, MTH and GM&O respectfully request that the Board issue a decision approving the requested transfer at an early date prior to July 15, 2008

Very truly yours,



Thomas F. McFarland
*Attorney for City of New Albany, Mississippi,
GM&O Rails-to-Trails Recreational
District of North Mississippi, and
Mississippi Tennessee Holdings, LLC*

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cc: Roy Tipton, Esq., by e-mail to rmtipton@mdot.state.ms.us
Robert M. Carter, Esq., by e-mail to rmclaw1973@hotmail.com
Mr. Greg Cundiff - MTH, by e-mail to gregcundiff@ironhorseresources.com
Mr. Barry McClure - MTR, by e-mail bmmclure@ironhorseresources.com

SURFACE TRANSPORTATION BOARD DECISION DOCUMENT
Decision Information

Docket Number: **AB_868_0_X**

Case Title: **MISSISSIPPI TENNESSEE HOLDINGS, LLC--ABANDONMENT
EXEMPTION--IN UNION, PONTOTOC AND CHICKASAW COUNTIES,
MS**

Decision Type: **Decision**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes: **DECISION IMPLEMENTED AN INTERIM TRAIL USE/RAIL BANKING
NEGOTIATION PERIOD OF 90 DAYS.**

Full Text of Decision



37119
DO

SERVICE DATE – JULY 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

[1]

STB Docket No AB-868X

**MISSISSIPPI TENNESSEE HOLDINGS, LLC--ABANDONMENT EXEMPTION--
IN UNION, PONTOTOC AND CHICKASAW COUNTIES, MS**

Decided: July 5, 2006

By decision and notice of interim trail use or abandonment served on July 26, 2004, the Board granted a petition for exemption under 49 U.S.C. 10502 permitting Mississippi Tennessee Holdings, LLC (MTH) to abandon, and Mississippi Tennessee Railroad, LLC to discontinue service over, a 43.2-mile line of railroad in Union, Pontotoc and Chickasaw Counties, MS, extending from milepost 324.2 near New Albany to the end of the line at milepost 281.0 near Houston, MS. A decision served on November 18, 2004, terminated the offer of financial assistance process and permitted the abandonment authorization to become effective on the service date of the decision. However, a decision served on October 21, 2005, granted a request by MTH for an extension of 1 year in the deadline, until November 18, 2006, for filing a notice of consummation of abandonment in this proceeding, to allow continued negotiations with local government agencies for acquisition of the rail line for rail banking and interim trail use.

On June 19, 2006, the City of New Albany, MS (City) filed a request for the issuance of a notice of interim trail use (NITU) for the entire 43.2-mile rail line, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, in order to negotiate with MTH for acquisition of the

[2]

right-of-way for use as a trail. The City has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. In a response filed on June 27, 2006, MTH indicated that it has not consummated the abandonment of the line and that it is willing to negotiate with the City for interim trail use for a period of 90 days

Because the City's request complies with the requirements of 49 CFR 1152.29 and MTH is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during

[3]

the 90-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 90 days, MTH may fully abandon the line, provided the previously imposed environmental conditions are met. See 49 CFR 1152.29(d)
(1) Use of the right-of-way for trail purposes is subject to future restoration for railroad purposes

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1 The decision and notice served on July 26, 2004, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below for a period of 90 days from the service date of this decision and notice.

2 If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way

3 Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by October 4, 2006, interim trail use may be implemented. If no agreement is reached by that time, MTH may fully abandon the line, provided the previously imposed environmental conditions are met.

6. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

[1]

Prior decisions in this proceeding have also embraced Mississippi Tennessee Railroad, LLC-Discontinuance of Service Exemption-in Union, Pontotoc and Chickasaw Counties, MS, STB Docket No AB-869X

[2]

The City also filed a request for imposition of a public use condition under 49 U.S.C. 10905. The Board, however, previously imposed a public use condition in this proceeding, which expired pursuant to the statute 180 days from the November 18, 2004 effective date of the abandonment exemption.

[3]

Although the City requested a 180-day negotiating period, MTH has agreed only to a 90-day negotiating period. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU for more than the 90 days agreed to by MTH in this proceeding. See Rail Abandonments-Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986)

Decision Attachments

37119.pdf

12 KB

Approximate download time at 28.8 kb: 6 Seconds

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STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 C F R. 1152.29, GM&O Rails-to-Trails Recreational District of North Mississippi (GM&O) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by Mississippi Tennessee Holdings, LLC (MTH) and operated by Mississippi Tennessee Railroad, LLC (MTR). The property extends from milepost 324.2 at or near New Albany to the end of the line at milepost 28.10 at or near Houston, MS, a distance of 43.2 miles in Union, Pontotoc and Chickasaw Counties, Mississippi. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-868.

GM&O acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the same date it is being served on the Board.

**RESOLUTION OF THE MAYOR AND BOARD OF ALDERMEN
OF NEW ALBANY, MISSISSIPPI ASSIGNING ALL RIGHTS OF
THE CITY RELATIVE TO THE RAIL BANKING AND
"RAILS TO TRAILS" PROGRAM**

The City Attorney brought to the attention of the Board that the closing of the transaction with the Mississippi Tennessee Holdings, LLC for the purchase of certain trackage located in Union, Pontotoc and Chickasaw Counties appeared to be eminent and that the city needed to transfer any and all rights and responsibilities it may have in this transaction to the "GM&O Rails-to-Trails Recreational District of North Mississippi". The following resolution, having been first reduced to writing, was introduced:

WHEREAS, the Mayor and Board of Aldermen of New Albany, Mississippi earlier authorized the Attorney for the City to take such action as was appropriate and necessary to see that a portion of the rail lines owned by Mississippi Tennessee Holdings, LLC be placed in the rail banking program and to secure funds so as to participate in the Rails to Trails Program; and

WHEREAS, at that time, the Rails to Trails District had not been formed and the City of New Albany agreed to be the sponsor of efforts to have the Surface Transportation Board abandon certain trackage proposed for the Rails to Trails Program; and

WHEREAS, the Mayor and Board of Aldermen of the City of New Albany, Mississippi later agreed to participate in the creation of a Rails to Trails Recreational District to be known as the "GM&O Rails-to-Trails Recreational District of North Mississippi and the same was formed; and

WHEREAS, the "GM&O Rails-to-Trails Recreational District of North Mississippi" was established and all rights and responsibilities passing from the railroad at closing would be more properly assumed by the Recreational District rather than the City of New Albany and it is the desire of both the City and the Recreational District that this be accomplished; and

NOW THEREFORE BE IT RESOLVED by the Mayor and Board of Aldermen of the City of New Albany, MS as follows:

The Attorney for the City of New Albany is hereby authorized and directed to draft the necessary document or documents for the City to assign any and all of its rights and responsibilities in the agreement with the railroad and all proceedings before the Surface Transportation Board to the "GM&O Rails-to-Trails Recreational District of North Mississippi" and the Mayor and City Clerk are authorized and directed to execute and deliver all documents necessary for this. After a full discussion of this matter, Alderman Tucker moved that the foregoing Resolution be adopted and the motion was seconded by Alderman Sanford, and upon the question being put to a vote, the Resolution was unanimously adopted by the affirmative vote of the Mayor and

Board of Aldermen of the City of New Albany, Mississippi, with the vote being as follows:

Alderman Skinner voted:	Aye
Alderman Olsen voted:	Aye
Alderman Sanford voted:	Aye
Alderman Beasley voted:	Aye
Alderman Tucker voted:	Aye

SO RESOLVED on this the 2nd day of June, 2008

Witness the hand and seal of the Mayor and Clerk of the City of New Albany on this the 5th day of June, 2008.



Tim Kent, Mayor

Attest:



Anne Neal, City Clerk

STATE OF MISSISSIPPI

COUNTY OF UNION

ASSIGNMENT AND ACCEPTANCE OF SAME

The City of New Albany, Mississippi (hereinafter City) has been the requestor in proceedings before the Surface Transportation Board (hereinafter STB) in STB Docket No. AB-868(sub-no. IX) and STB Docket No. AB-869(sub-no. IX) for a Certificate for Railbanking and Interim Recreational Trail Use and has been involved in negotiations for the purchase of land, easements and all other rights owned or claimed by the Mississippi Tennessee Holdings, LLC (hereinafter Railroad) from Mile Post 281.0 at or near Houston, Mississippi northward to a point seventy feet (70') south of the centerline of the Burlington Northern Santa Fe Railroad main line at or near Mile Post 325.53. Since the City became the requestor in the above referenced proceedings, the GM&O Rails-to-Trails Recreational District of North Mississippi (hereinafter District) has been formed for the purpose of pursuing the eventual purchase of certain land and other rights from the Railroad and establishing a Rails to Trails Program. The district consists of the counties of Union, Pontotoc and Chickasaw as well as the Cities/Towns of New Albany, Ecru, Pontotoc, Algoma, Houlka, and Houston, all pursuant to MCA Section 55-25-1, et seq and its president is Betsey Hamilton.

The City desires to assign all of its rights and responsibilities in the proceedings before the Surface Transportation Board as well as the negotiations with the Railroad so that the District will effectively replace the City and assume all such rights and responsibilities and it is the desire of the District to accept such assignment

FOR AND IN CONSIDERATION of the mutual benefits flowing between the City and the District, the City does hereby assign and set over to the District all of its rights and responsibilities pursuant to the above referenced proceedings before the SFB and the negotiations with the Railroad so that the District will be able to pursue the placing of certain lands and other rights now owned by the Railroad into the Railbanking Program and thereafter establish what will be known as the "Tanglefoot Trail" and to operate said space formerly owned by the Railroad as a Rails to Trails Recreational District. It is the desire of the District to accept and, by execution below, the District does in fact accept all such rights and responsibilities and hold the City harmless on the same from and after the execution of this document as shown below.

Witness the signatures of the parties on this the 5th day of June, 2008

ASSIGNOR:

City of New Albany, MS

By:


Tim Kent Mayor

Attest.


Anne Neal, City Clerk

ASSIGNEE.

GM&O Rails-to-Trails Recreational
District of North Mississippi

By:


President